IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

SECOND APPEAL NO.609 OF 2005
WITH
CIVIL APPLICATION NO.1081 OF 2005

Shri Ravindra Purushottam Kulkarni — Appellant
vs.
Shri Dilip Kanayo Tilwani,
thrugh its power of Attorney holder
Shri K.V.Tilwani. — Respondent

Mr.C.D.Konale for the appellant.

Mr.Navin B. Shah i/by. Mr.Piyush Shah for the respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 22nd August, 2007

P.C.

Both the Courts, after considering the evidence and the material on the record, held that the appellant/defendant has taken Rs.1,00,000/- (Rupees one lakh) by way of consideration for vacating the tenanted premises by agreement dated 10/9/1997 (Ex.24) in violation of Section 19 of the Bombay Rent Act. The above consideration for such agreement is illegal. Therefore, the respondent/plaintiff is entitled to recover the same with interest. The Suit was for the recovery of the said amount with interest.

2. The appellant failed to prove the case of payment of Rs.1 lakh to M/s.Shyama Construction for purchase of the flat no.6-B.

3. Sections 23 and 65 of the Indian Contract Act, 1872 provides that only consideration received based on such is void and illegal contract, the person who has received such advantage cannot withheld and must return the benefit with interest vide **The Life Insurance Corporation of India v. Rajmata Saheb, A.I.R.1978 SC 1447.**

4. The reasoning given by the Courts below on such uncontroverted agreement dated 10.9.1997 (Ex.24) is within the frame of law and the record. The order is not perverse.

5. The Civil Court has jurisdiction to pass such decree as it is the suit by the respondent/plaintiff for recovery of money paid to appellant based on void contract. There is no bar under the Bombay Rent Act to recover such money.

6. Resultantly, the Second Appeal is dismissed. No costs.

7. In view of dismissal of the Second Appeal, C.A. No.1081/2005 is also dismissed. The stay stands vacated.

[ANOOP V. MOHTA,J.]